

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 26 2011

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2011-0017-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
DION DAVID BRUNER,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR20083647 and CR20083891

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Dion D. Bruner

Winslow  
In Propria Persona

HOWARD, Chief Judge.

¶1 Petitioner Dion Bruner seeks review of the trial court’s denial of his motion to extend the time to file a petition for post-conviction relief, and presumably its dismissal of his notice of post-conviction relief and the denial of his motions to reconsider its decision. We review a trial court’s denial of post-conviction relief for an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Pursuant to a plea agreement, Bruner was convicted of possession of a deadly weapon by a prohibited possessor, theft by control, two counts of first-degree burglary, and four counts of armed robbery. The trial court imposed concurrent, presumptive and aggravated prison terms, the longest of which are eighteen years. In February 2010, the court dismissed Bruner’s first petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Bruner’s attorney at the time filed a subsequent notice of post-conviction relief. After Bruner’s newly appointed counsel, Richard Parrish, notified the court he could find no arguable basis for Rule 32 relief, the court granted an extension of time, giving Bruner until October 4, 2010, to file a pro se petition.

¶3 Apparently unaware that Bruner had mailed a “Request for Extension of Time for Filing of Rule 32 Pro se Petition” on September 30, 2010, the trial court dismissed Bruner’s notice of post-conviction relief on October 7, 2010, noting he had not filed a pro se petition in the allotted time. However, on November 4, 2010, the court

acknowledged Bruner had sought an extension of the Rule 32 deadline, but nonetheless found “good cause ha[d] not been shown for granting the extension” and denied his request. Bruner then filed two pro se motions for reconsideration on November 9 and 23, first asserting his extension request had been filed timely, and also explaining that, because there was no law library at the prison, he needed additional time to obtain legal authority to support his petition.

¶4 The trial court denied the motions for reconsideration, finding Bruner’s claims to be without merit for the following reasons:

The Court regularly receives timely filed pro-per petitions for post-conviction relief from inmates in the Department of Corrections, complete with appropriate case authority. Petitioner has not alleged any circumstances which place him in a different position tha[n] others seeking post-conviction relief.

Additionally, Petitioner argues that an extension should be granted because delays in the prison mailing system would demand mailing two weeks prior to the deadline to ensure a timely filing. This assertion, raised now for the first time nearly two months after the deadline for filing the pro-[se] petition, also does not constitute good cause for reconsideration.

¶5 Bruner filed this petition for review challenging the trial court’s denial of the motion to extend time to file a petition for post-conviction relief, presumably also challenging the dismissal of the notice of post-conviction relief and the motions for reconsideration. Rule 32.4(c)(2), Ariz. R. Crim. P., provides that on “a showing of good cause,” a defendant in a non-capital case may be granted a thirty-day extension of time to

file a petition for post-conviction relief. Absent an abuse of discretion, we will not interfere with the court's ruling. *Watton*, 164 Ariz. at 325, 793 P.2d at 82. Bruner asserts that, because he did not have access to a law library and therefore could not obtain case law to support the claims in his petition, he was entitled to an extension. As authority, Bruner relies on *Bounds v. Smith*, 430 U.S. 817, 828 (1977), in which the Supreme Court held "that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."

¶6 Notably, attorney Parrish told the trial court, "I confess that the purpose of this Rule 32 application by the Defendant puzzles me. . . . After complete and thorough study of the record in this matter, appointed counsel undersigned finds no tenable issue for review and cannot proceed." Similarly, Bruner did not suggest to the court the nature of the claims he intended to raise in his petition, that he had started working on such a petition, or why access to a law library was necessary to support these claims. Accordingly, based on this record, we cannot say the court abused its discretion in denying Bruner's motion to extend. *See State v. Clark*, 196 Ariz. 530, ¶ 47, 2 P.3d 89, 99 (App. 1999) ("[A] prisoner must demonstrate not only a denial of meaningful access [to a law library or to legal assistance] but also that the denial has actually injured his ability to present a meritorious argument to the court.").

¶7 Because Bruner did not meet his burden of showing excusable noncompliance with Rule 32, the court did not abuse its discretion in dismissing the motion to extend, the notice of post-conviction relief, or the motions for reconsideration.

¶8 Accordingly, although we grant the petition for review, we deny relief.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge